

3.Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Snowshoe Ranch LLC

OBJECTOR: Snowshoe Ranch LLC

CASE 76D-0240-R-2023

76D 27770-00

76D 27771-00

76D 27772-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Statement of the case

Claimant, Snowshoe Ranch LLC, objected to its own claims - flow rate and point of diversion for fish and wildlife claim 76D 27770-00; point of diversion for irrigation claim 76D 27771-00; and maximum acres irrigated, place of use, and point of diversion for domestic claim 76D 27772-00.

Each claim received notice issue remarks concerning modification of the claim's elements by the Department of Natural Resources and Conservation ("DNRC"). Issue remarks often result from DNRC claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims.

Montana law requires the Water Court to resolve issue remarks and objections.

The court requested additional evidence and information to fully resolve Snowshoe Ranch LLC's objections to claims 76D 27770-00 and 76D 27772-00. On March 2, 2023, Snowshoe Ranch LLC filed its evidence and response.

Issues

1. Is Snowshoe Ranch LLC's objection to each claim resolved?
2. Are the notice issue remarks on each claim resolved?

Findings of fact

1. Each statement of claim identified the point of diversion as the NWNENW and S2NE of Section 10, Township 29 North, Range 31 West, Lincoln County.
2. The historically accurate point of diversion for the dam on each claim is the SWNE, Section 10, Township 29 North, Range 31 West, Lincoln County.
3. The historically accurate point of diversion for the pump identified by claim 76D 27771-00 is the NESWNE of Section 10, Township 29 North, Range 31 West, Lincoln County.
4. The quantified flow rate appearing on fish and wildlife claim 76D 27770-00 should be replaced by the standard flow rate information remark for an onstream

reservoir.

5. A preponderance of evidence establishes that domestic claim 76D 27772-00 historically irrigated 3.00 acres in the SENE, Section 10, Township 29 North, Range 31 West, Lincoln County.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. If the settlement agreement expands or enlarges an element of a claim, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. The Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

6. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water

right. Section 85-2-247(2), MCA.

7. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

Analysis

Issue 1 – objection resolution

During claims examination completed in the 1980s, DNRC clarified the points of diversion identified by each statement of claim. These clarified points of diversion, with the exception claim 76D 27770-00, were modified a second time during DNRC claims examination for issuance of the 76D Preliminary Decree in 2021. Snowshoe Ranch LLC objected to the DNRC modified point of diversion identified by each claim. The modified point of diversion proposed by Snowshoe Ranch LLC reflects the fact that the dam historically extended into the SWSWNE of Section 10, Township 29 North, Range 31 West, Lincoln County. Snowshoe Ranch LLC's proposed refined point of diversion legal land descriptions should appear on each abstract.

Snowshoe Ranch LLC pointed out that an onstream reservoir for fish and wildlife should not have a quantified flow rate, instead appearing with a standard information remark for the flow rate element. Based upon evidence in the claim file and the recent evidence provided by Snowshoe Ranch LLC, the standard flow rate information remark should appear under the flow rate on fish and wildlife claim 76D 27770-00.¹

For domestic claim 76D 27772-00, Snowshoe Ranch LLC's objection explained water was historically pumped and continues to be pumped from the reservoir via underground pipeline to the Caretaker's Place in the SENE of Section 10. Snowshoe Ranch LLC provided 1970, 1979, and 2017 aerial photos supporting the addition of 3.00 acres of irrigation to domestic claim 76D 27772-00.²

A copy of Snowshoe Ranch LLC's March 2, 2023 evidence and response

¹ See Rule 29(c)(1), W.R.C.E.R.

² Pursuant Rule 18, W.R.C.E.R., domestic claims may include up to 5.00 acres of irrigation for a house, garden, etc.

supporting its proposed resolution of objections may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 2.00. Snowshoe Ranch LLC's evidence and response included aerial photos depicting the place of use for domestic claim 76D 27772-00. Copies of the maps are included with this report. Both the report and the maps will be placed in the claim files for future reference.

Conclusions of law

Snowshoe Ranch LLC's proposed refined legal land descriptions for the dam point of diversion on each claim and the pump point of diversion identified by irrigation claim 76D 27771-00 are reductions within the parameters of the statements of claim, justify the point of diversion modifications to each claim, and resolve Snowshoe Ranch LLC's point of diversion objection to each claim.

Snowshoe Ranch LLC's proposed addition of the standard flow rate information to fish and wildlife claim 76D 27770-00 has no substantive effect on the claim. The claim continues to be limited by the quantified volume. The proposed modification is logical, acceptable, and resolves Snowshoe Ranch LLC's flow rate objection to the claim.

Snowshoe Ranch LLC's proposed modified legal land description for the place of use identified by domestic claim 76D 27772-00 and the addition of 3.00 acres of irrigation are historically accurate and overcome by a preponderance of evidence the prima facie proof afforded the statement of claim, justify the modification to the claim, and resolve Snowshoe Ranch LLC's objection to the maximum acres irrigated and place of use identified by domestic claim 76D 27772-00.

Issue 2 – issue remark resolution

The above captioned claims appeared in the Preliminary Decree with the following notice issue remarks:

76D 27770-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS

SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

MEANS OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

76D 27771-00 and 76D 27772-00

POINT OF DIVERSION AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Each of the foregoing issue remarks provided the opportunity for claimant and other water users to object to the claims, or elements of the claims noted by the issue remarks. Snowshoe Ranch LLC's objections to the point of diversion identified by each claim are resolved by these proceedings. No one, including Snowshoe Ranch LLC, objected to the period of diversion element identified by the issue remark on claim 76D 27770-00.

Conclusion of law

The issue remarks appearing on each claim served their notice purpose.

Recommendations

The claims should be modified as follows to accurately reflect historical use.

76D 27770-00

FLOW RATE: 40.00 GPM

A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

POINT OF DIVERSION 76D 27770-00, 76D 27771-00, and 76D 27772-00

SEE POST DECREE ABSTRACTS ATTACHED TO THIS REPORT.

76D 27772-00

MAXIMUM ACRES: NONE 3.00

PLACE OF USE:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3.00	SENE	SWNE	10	29N	31W	LINCOLN
TOTAL: 3.00						

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Email:

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Note: Service List Updated 4/6/2023

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 27770-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: SNOWSHOE RANCH LLC
PO BOX 7054
BILLINGS, MT 59103 7054

Priority Date: MAY 12, 1971

Type of Historical Right: USE

***Purpose (use):** FISH AND WILDLIFE
Purpose Clarification: FISH POND

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 101.90 AC-FT
THE VOLUME AND FLOW ARE LIMITED TO ONE FILL PER YEAR.

Source Name: UNNAMED TRIBUTARY OF NO CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	10	29N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNE	10	29N	31W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 31.80 ACRES

Capacity: 101.70 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2	10	29N	31W	LINCOLN

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 27771-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SNOWSHOE RANCH LLC
PO BOX 7054
BILLINGS, MT 59103 7054

Priority Date: JULY 1, 1970

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 6.96 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 10.00

Source Name: UNNAMED TRIBUTARY OF NO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	10	29N	31W	LINCOLN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
2		NESWNE	10	29N	31W	LINCOLN
Period of Diversion:	MAY 15 TO SEPTEMBER 30					
Diversion Means:	PUMP					
Reservoir:	ONSTREAM					
	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		SESWNE	10	29N	31W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 15 TO SEPTEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		N2SWNE	10	29N	31W	LINCOLN
2	8.00		NENW	10	29N	31W	LINCOLN
Total:	10.00						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 27772-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SNOWSHOE RANCH LLC
PO BOX 7054
BILLINGS, MT 59103 7054

Priority Date: AUGUST 1, 1967

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 3.00

Source Name: UNNAMED TRIBUTARY OF NO CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	10	29N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

PUMP IS A SECONDARY MEANS OF DIVERSION AND IS MOVEABLE ALL ALONG THE
RESERVOIR IN THE W2NE OF THE SECTION.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNE	10	29N	31W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

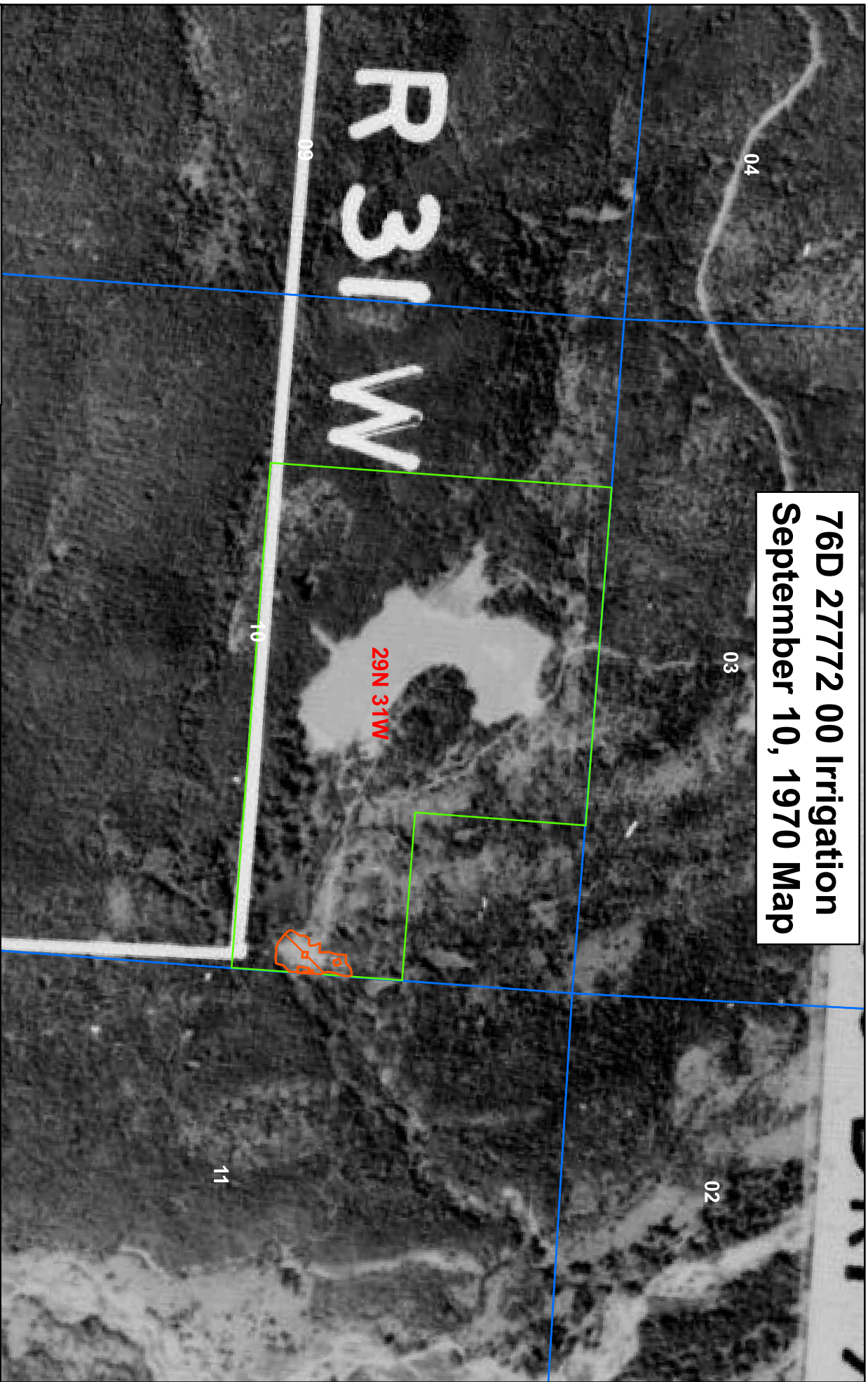
Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:





<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.00		SENE	10	29N	31W	LINCOLN

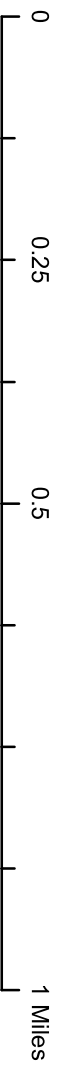
Total: 3.00

76D 27772 00 Irrigation
September 10, 1970 Map



Legend

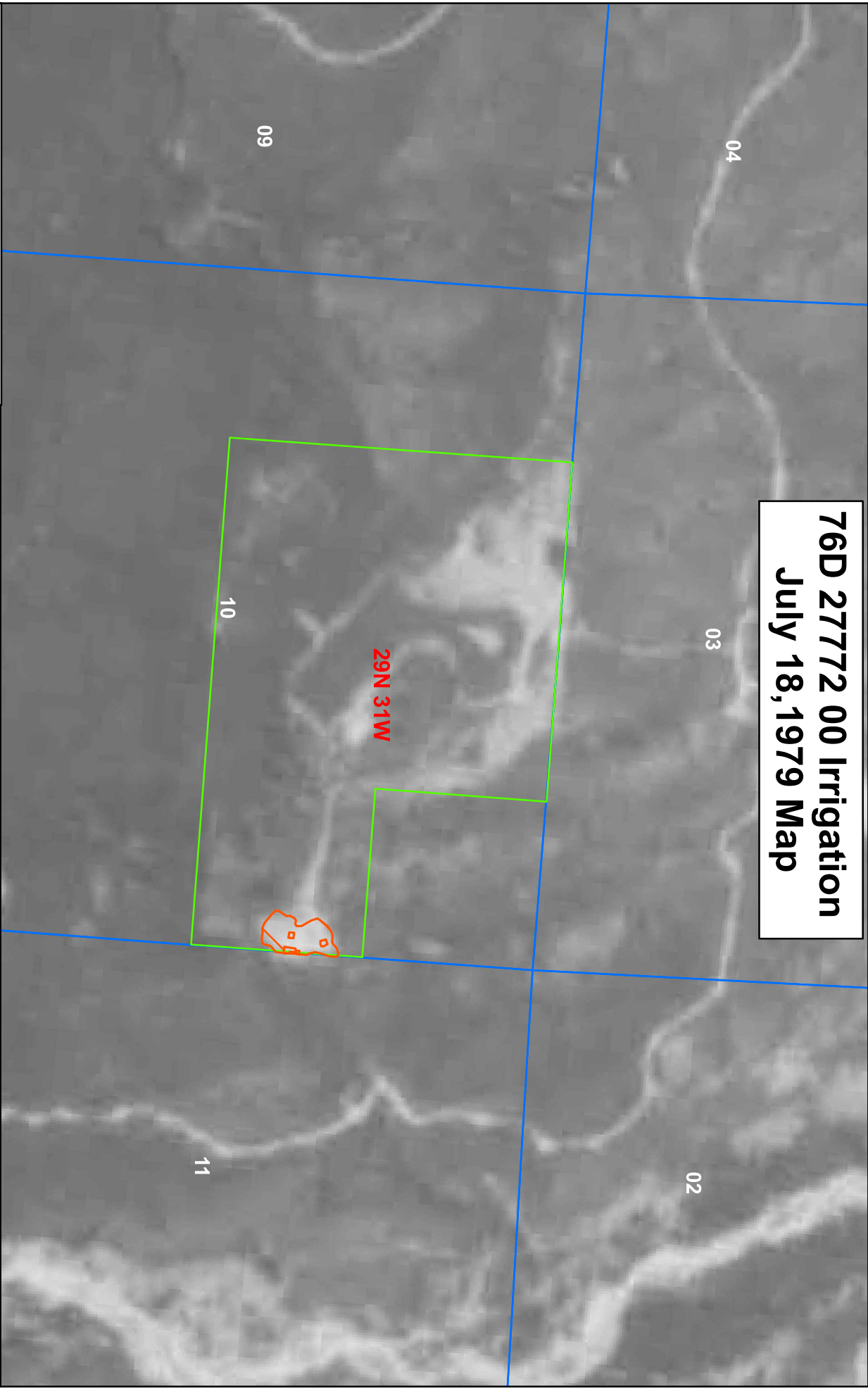
-  76D 27772 00 L&G POU (2.6 acres)
-  Snowshoe Ranch Property
-  Township/Range
-  Section







9/10/1970 USDA Aerials
MT State Plane
NAD 1983
Lincoln County, MT

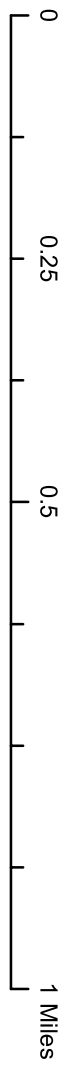


**76D 27772 00 Irrigation
July 18, 1979 Map**

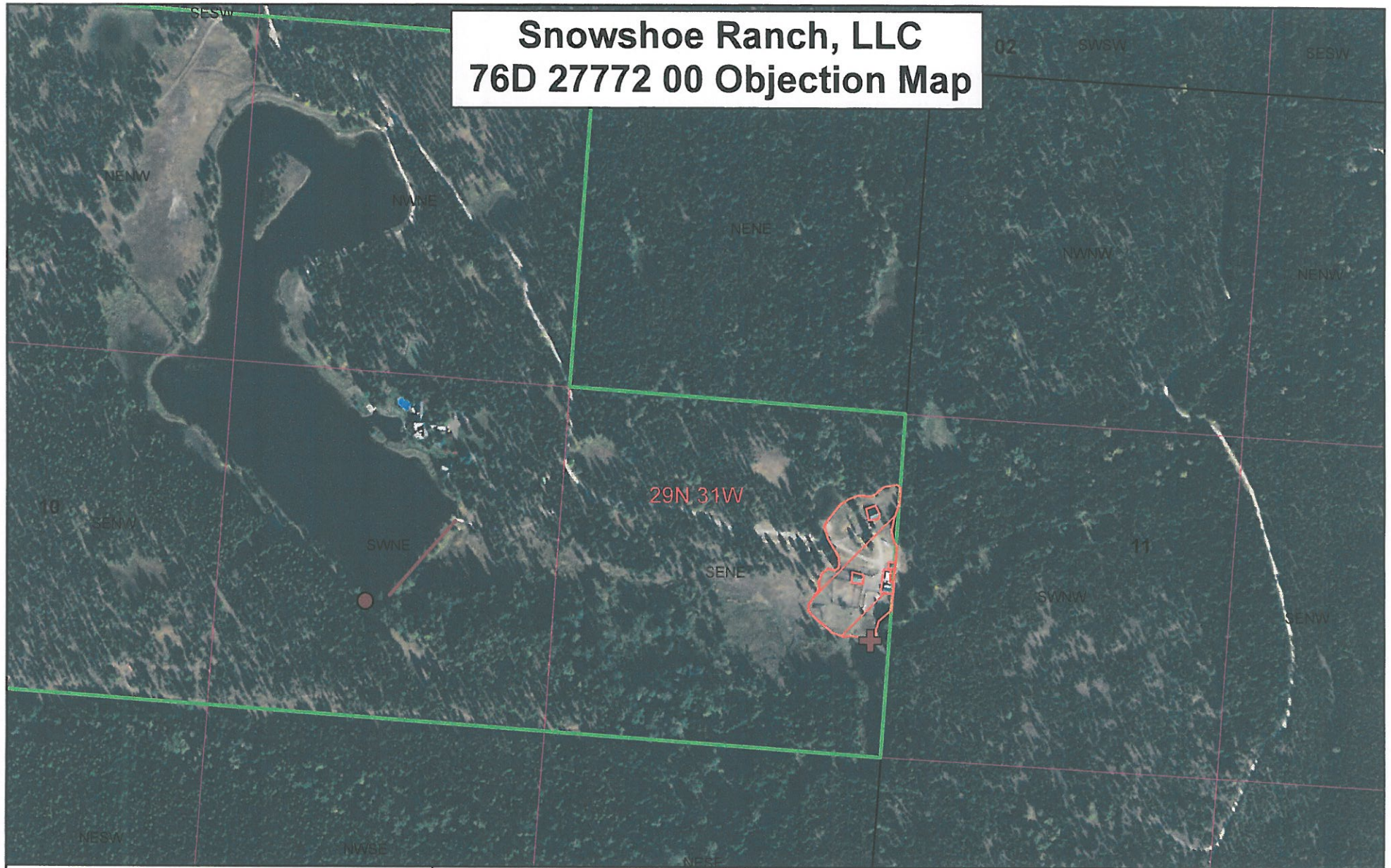


Legend





-  76D 27772 00 L&G POU (3 acres)
-  Snowshoe Ranch Property
-  Township/Range
-  Section



Snowshoe Ranch, LLC 76D 27772 00 Objection Map



Legend

-  76D 27772 00 Claimed POD (Domestic)
-  76D 27772 00 Actual Dam POD
-  76D 27772 00 Secondary POD (Domestic and L&G)
-  76D 27772 00 L&G POU (3 acres)
-  Snowshoe Ranch Property

0 0.125 0.25 0.5 Miles



2017 NAIP Aerials
MT State Plane
NAD 1983
Lincoln County, MT

